

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: INVOKANA (CANAGLIFLOZIN)

CIVIL ACTION NUMBER:

3:16-MD-02750 (BRM)

PRODUCTS LIABILITY LITIGATION
STATUS CONFERENCE

Clarkson S. Fisher United States Courthouse
402 East State Street
Trenton, New Jersey 08608
January 12, 2017

B E F O R E:

THE HONORABLE BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

THE HONORABLE LOIS GOODMAN
UNITED STATES MAGISTRATE JUDGE

Certified as True and Correct as required by Title 28, U.S.C.,
Section 753

/S/ Regina A. Berenato-Tell, RDR, CRR, CCR

A P P E A R A N C E S:

ATTORNEYS FOR THE PLAINTIFFS:

SEEGER WEISS

BY: CHRISTOPHER A. SEEGER, ESQUIRE
JEFFREY S. GRAND, ESQUIRE

CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.

BY: JAMES CECCHI, ESQUIRE
DON ECKLUND, ESQUIRE

DOUGLAS & LONDON

BY: MICHAEL LONDON, ESQUIRE
VIRGINIA ANELLO, ESQUIRE

BERNSTEIN LIEBHARD, LLP

BY: JESSICA KELLER, ESQUIRE

NAPOLI SHKOLNIK, LLC

BY: HUNTER SHKOLNIK, ESQUIRE

WEITZ & LUXENBERG, P.C.

BY: DANIELLE GOLD, ESQUIRE

BURG, SIMPSON, ELDREDGE, HERSH, JARDINE, P.C.

BY: SETH A. KATZ, ESQUIRE

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, P.C.

BY: TIMOTHY M. O'BRIEN, ESQUIRE

GOMEZ TRIAL ATTORNEYS

BY: JOHN GOMEZ, ESQUIRE

AVRAM BLAIR & ASSOCIATES

BY: AVRAM BLAIR, ESQUIRE

BEASLEY ALLEN, CROW, METHVIN, PORTIS & MILES, P.C.

BY: DANIELLE WARD MASON, ESQUIRE

ROBINS, KAPLAN, LLC

BY: HOLLY DOLEJSI, ESQUIRE

EXCOLO LAW, PLLC

BY: KEITH ALTMAN, ESQUIRE

EISBROUCH, MARSH, LLC

BY: DAVID EISBROUCH, ESQUIRE

1 A P P E A R A N C E S C O N T I N U E D . . .

2

3 IRPINO LAW FIRM
BY: ANTHONY IRPINO, ESQUIRE

4

LOPEZ, McHUGH
5 BY: JOSH MANKOFF, ESQUIRE

6 MICHAEL HINGLE & ASSOCIATES
BY: KEVIN STEELE, ESQUIRE

7

BRYAN PFLEGER, ESQUIRE

8

WEBSTER LAW FIRM
9 BY: JASON WEBSTER, ESQUIRE

10

11

ATTORNEYS FOR THE DEFENDANT:

12

DRINKER BIDDLE & REATH, LLP
13 BY: MICHAEL C. ZOGBY, ESQUIRE

14 TUCKER ELLIS, LLP
BY: MOLLIE F. BENEDICT, ESQUIRE
15 JOHN Q. LEWIS, ESQUIRE

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1 (In open court. Thursday, January 12, 2017. 10:30 a.m.)

2 JUDGE MARTINOTTI: You can be all be seated. I'm
3 sorry.

4 Okay. Counsel, welcome to New Jersey, also, known as
5 the garden state, notwithstanding your perception driving up
6 and down the Turnpike.

7 I just want to welcome everyone and introduce our staff
8 to you, and then we'll get some appearances in a few moments.

9 Seated to my left is Judge Goodman. She is the
10 Magistrate Judge that will handle all the fun discovery issues
11 and other ancillary issues that you may have as the litigation
12 progresses.

13 Seated right in front of me is my Courtroom Deputy,
14 Dana, who you will be interacting with on various scheduling
15 issues.

16 To her right is Regina, our court reporter.

17 At the table to my right is Jennifer. Some of you who
18 appeared before me in state court may remember her. She was
19 my law clerk several years ago, and I'm happy has joined me
20 here in Federal Court.

21 In the front row to your right, my left, is Phil, Judge
22 Goodman's law clerk.

23 And seated at the table is Kim, the spy from the
24 clerk's office.

25 We are all looking forward to working with you on this

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1 litigation. I am sure with all counsels' cooperation and all
2 working together we can move this litigation forward
3 efficiently, and, hopefully, toward a resolution. I'm in a
4 unique position today, as I stand here as a federal judge,
5 having served as a State Court Judge for 14 years, the last
6 seven of which dealing with MCLs, which is multi-county
7 litigation and mass torts in Bergen County. I have worked
8 with many federal judges throughout that time. I am a
9 proponent of federal and state cooperation and will continue
10 that theme here now as I stand as a federal judge.

11 I will be working with the State Court judges
12 coordinating issues to avoid duplication and unnecessary work.
13 The goal is to keep this litigation moving efficiently, not
14 reinventing the wheel, and, hopefully, all pulling together so
15 we can resolve this matter. I have reviewed the submissions
16 and application for those who desire to be part of several
17 committees. We'll talk about that in a few moments.

18 Now that you know who we are, I'm going to ask that
19 everyone get up, tell me who you are, where you're from,
20 approximately how many cases you have, and if it is not
21 tipping your hand how many cases you think you're going to
22 have, if you have any cases pending in any other
23 jurisdictions, whether it is state or I know there's another
24 federal issue going on, and one sentence or less if you have
25 any mass tort or MDL experience.

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1 Sir?

2 MR. SEEGER: Good morning, Your Honor. Chris Seeger.
3 I have a little bit of mass tort experience. I have done a
4 number of them, your Honor. We have probably somewhere in the
5 neighborhood of two to 300 cases. We don't have -- we have a
6 fraction of those filed so far, but they're getting filed.
7 And that's it. Did you need anything else?

8 JUDGE MARTINOTTI: That's it.

9 MR. CECCHI: Good morning, your Honor. James Cecchi
10 of Carella Byrne. I also have a smidgen of plaintiffs'
11 experience in this district and elsewhere. I don't have a
12 huge inventory of cases personally. I'm co-counsel with my
13 learned colleague on a number of cases. I do anticipate,
14 however, having an inventory of about 50 to 100 cases.

15 JUDGE MARTINOTTI: You know when you're on this side
16 of the bench when they refer to you as "learned" that means
17 you're getting reversed.

18 MR. CECCHI: That means your clerk is getting
19 reversed.

20 MR. LONDON: Good morning, your Honor. Michael
21 London. I have got mass tort experience. I think the Court
22 is aware of some of it. I believe we have 12 filed cases here
23 in this district, including the first filed case, the Puentes
24 case, and we're currently investigating about 250 cases.

25 JUDGE MARTINOTTI: Okay.

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1 MR. KATZ: Seth Katz from Burg Simpson in Denver,
2 Colorado. Good morning, your Honor. My firm probably has 50
3 to 70 cases at this point. I do have mass tort experience in
4 other MDLs. I have been lead counsel in and have served on
5 executive committees in others cases so ...

6 JUDGE MARTINOTTI: Welcome.

7 MR. GRAND: Jeff Grand from Seeger Weiss. I have
8 mass tort experience before your Honor, as well as in several
9 other cases.

10 MR. O'BRIEN: Hi, Your Honor. Tim O'Brien from Levin
11 Papantonio. My firm represents 400 of the Invokana cases
12 filed.

13 JUDGE MARTINOTTI: How many?

14 MR. O'BRIEN: 400. The Brenda Friedman case has 100
15 of those. That's a case that was removed from St. Clair, went
16 to Southern District of Illinois, there was a motion for
17 remand. We're going to be formally withdrawing our motion to
18 remand that case now that it has been transferred by the JPML
19 here. Mass tort experience quite a bit. I was lead counsel
20 for the Fosamax jaw MDL in the Southern District of New York,
21 which is MDL 1789. Served on several executive committees and
22 PSCs with these gentlemen and ladies in this courtroom.

23 Thank you, your Honor.

24 MR. EISBROUCH: Good morning, Your Honor. David
25 Eisbrouch from Eisbrouch Marsh in Hackensack. I worked on

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1 several committees on mass torts for the last 15 years. I'm
2 co-counsel with several firms in the room today, and I'm going
3 to let them speak for how many cases have been filed and how
4 many cases are pending totally.

5 Thank you, Your Honor.

6 MR. ALTMAN: Good morning, your Honor. Keith Altman
7 from Excolo Law in Southfield, Michigan. We currently have
8 about 25 plaintiffs. We have cases filed in State Court in
9 California, and we have about -- I don't know -- about 70
10 other cases that we will be filing -- based on agreement with
11 defense counsel -- we'll be filing in the MDL. I have been
12 working on MDLs for a long time, and I kind of grew up on it
13 through law school all the way through.

14 So thank you, Your Honor.

15 JUDGE MARTINOTTI: Welcome.

16 MR. WEBSTER: Good morning, your Honor. Jason
17 Webster from the Webster Law Firm. And this is Avram Blair
18 from Avram Blair and Associates. Collectively, your Honor,
19 our firms, along with Mr. Eisbrouch, approximately have
20 700 cases or contracts, I would say, with about another 300
21 pending at this time where we have had clients contact us and
22 it is in the process of getting those done. We have cases
23 filed on three different fronts right now, California, St.
24 Louis, actually Pennsylvania, and in the MDL.

25 JUDGE MARTINOTTI: Welcome.

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1 MR. WEBSTER: And Avram and I went to law school
2 together, and our entire careers have been mass tort
3 pharmaceutical work.

4 JUDGE MARTINOTTI: Thank you.

5 MR. SHKOLNIK: Good morning, Judge. Hunter Shkolnik.
6 Very nice to see you again. I have a little bit of mass tort
7 experience. I appeared before you before. I don't know how
8 many cases we have because I left my briefcase in the car, but
9 I know it is in excess of 55 or 60 cases, and I think we have
10 11 on file here, and we look forward to practicing before you.

11 Thank you.

12 JUDGE MARTINOTTI: Welcome.

13 MS. MASON: Good morning, your Honor. My name is
14 Danielle Mason. I'm with the Beasley, Allen Law Firm in
15 Montgomery, Alabama. I am currently the lead counsel for
16 Invokana at our firm, and we have approximately 60 to 70 cases
17 under investigation. We do have one filed that was recently
18 transferred to the MDL. I have significant mass tort and MDL
19 experience. I have handled HRT cases, hernia mesh, TVM.
20 Also, I'm litigating the talcum power cases in St. Louis, so I
21 have been in trial all last year doing that.

22 JUDGE MARTINOTTI: Welcome. Sorry about the national
23 championship.

24 MS. MASON: Oh, I'm still upset about that.

25 Ms. Dolejsi: Good morning, your Honor, I'm Holly

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1 Dolejsi from Robins Kaplan, the Minneapolis office. I'm also
2 the lead attorney on Invokana in my firm. Right now we have
3 one case filed. It is currently pending in the Eastern
4 District of Pennsylvania after being removed there, originally
5 filed in Philly State Court. We have about 15 cases, and I
6 anticipate eventually having around 50. We also have some
7 Farxiga cases, and I have been working in mass torts for six
8 years primarily doing Stryker/Rejuvenate before you in
9 New Jersey and then, also, I'm on a committee in the Benicar
10 MDL in Camden.

11 JUDGE MARTINOTTI: Send my regards to Judge Frank,
12 please.

13 MS. DOLEJSI: I will.

14 MS. KELLER: Good morning, Your Honor. I'm Jessica
15 Keller. I'm from Bernstein Liebhard. I'm stepping in for a
16 colleague, Dae Lee. We have about eight filed cases, two in
17 the State Court of Philadelphia. The other five are in the
18 MDL, and we anticipate about filing another 20.

19 JUDGE MARTINOTTI: Thank you.

20 MS. GOLD: Good morning, your Honor. My name is
21 Danielle Gold. I'm with Weitz and Luxenberg. I'm working
22 with Ellen Relkin in our office on the Invokana cases. We
23 have two cases presently filed before you in the MDL and about
24 20 cases in State Court Philadelphia. We also have several
25 Farxiga cases on file, as well.

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1 JUDGE MARTINOTTI: I did review Ms. Relkin's
2 submission and understand her position regarding the steering
3 committees.

4 MS. GOLD: Thank you.

5 MR. GOMEZ: Good morning, your Honor. John Gomez,
6 like I said, from San Diego. I have my own firm out there.
7 We have a handful of cases only, none filed yet. I plan to
8 grow that number.

9 JUDGE MARTINOTTI: Okay. Welcome.

10 MR. MANKOFF: Good morning, your Honor. Josh Mankoff
11 from Lopez McHugh. Our nearest office is in Moorestown,
12 New Jersey. We have about 40 cases filed. Most of them were
13 in State Court in Philadelphia and removed to the Eastern
14 District at this point and then a few more have been filed in
15 State Court since then.

16 JUDGE MARTINOTTI: Welcome.

17 MS. BRITTAIN LANDERS: Good morning, your Honor.
18 Ashley Brittain Landers from Schlichter, Bogard, and Denton in
19 St. Louis. I work with Roger Denton on these cases. I have
20 had experience in MDLs, including Yaz and NuvaRing, which your
21 Honor served on, and we appreciate that. We have, I guess, a
22 handful of cases that have been filed in the MDL directly. We
23 have also -- I guess we're on the Friedman case out of
24 Southern District of Illinois, which has been transferred
25 here, and we have other cases under investigation.

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1 Thank you for having me.

2 JUDGE MARTINOTTI: Welcome.

3 MR. IRPINO: Good morning. My name is Anthony
4 Irpino. My law firm is in New Orleans, Louisiana. Mardi Gras
5 is coming up shortly, so I don't know how I can get involved
6 right now, but I plan on doing it in the future.

7 Judge, I'm originally from Chicago. The relevance of
8 that is that the Chicago Cubs won the World Series this year,
9 and no matter what happens in this case, everything will be
10 fine in my life.

11 Judge, we have one case on file, and we're currently
12 investigating approximately 35 other cases. My experience in
13 MDLs is extensive going back 20 years, and I worked well and
14 cooperatively with many of the plaintiff lawyers in the room.

15 JUDGE MARTINOTTI: Have you ever appeared before
16 Judge Fallon?

17 MR. IRPINO: Yes. I'm currently before Judge Fallon
18 in the Chinese drywall litigation, as well as a lot of other
19 litigations. In the past the VIOXX litigation.

20 JUDGE MARTINOTTI: He is certainly an icon in this
21 law type.

22 MR. IRPINO: Yes, yes. I did not have a chance to
23 file a formal application, but would be interested in
24 participating on behalf of the plaintiffs.

25 JUDGE MARTINOTTI: Thank you.

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1 MR. PFLEGER: Brian Pfleger. I have extensive MDL
2 experience.

3 THE COURT: I'm sorry, sir, put your name back on the
4 record. I don't think the court reporter got it,

5 MR. PFLEGER: Brian Pfleger from New Orleans. I have
6 extensive MDL experience. Been doing this for about 17 years
7 now working on Bair Huggers, Xarelto, Taxotere right now. It
8 is nice to be here.

9 MR. STEELE: Good morning, Judge. Kevin Steele. I'm
10 assisting Mr. Pfleger and Mr. Hingle. Unfortunately, I have
11 no experience in any of these matters; however, like previous
12 counsel, I am from New Orleans, and I'm a part-time traffic
13 court judge, so if anybody is driving in New Orleans I got you
14 covered.

15 MR. SEEGER: He just got himself a committee spot.

16 MR. ECKLUND: Good morning, your Honor, Don Ecklund.
17 I work with Jim Cecchi at Carella Byrn. I have more than a
18 decade of MDL mass tort litigation. Work on a number of MDLs
19 across the country currently, and my mass tort experience goes
20 back to a clerkship with Judge Marina Corodemus.

21 JUDGE MARTINOTTI: Anyone else on the plaintiffs'
22 side?

23 They're ganging up against you, counsel. Defense?

24 MR. LEWIS: Good morning, your Honor. John Lewis
25 from Tucker Ellis and Cleveland for all of the defendants, and

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1 I have all of the cases for all of the defendants.

2 MS. BENEDICT: Good morning, your Honor. Mollie
3 Benedict, Tucker Ellis in Los Angeles. Also, all defendants,
4 all cases.

5 MR. ZOGBY: Good morning, your Honor. Michael Zogby,
6 Drinker Biddle and Reath. Same as John and Mollie with all
7 the cases. Florham Park, New Jersey.

8 JUDGE MARTINOTTI: Welcome. Counsel, again, welcome
9 to New Jersey for those of you who have traveled. For those
10 of you who have not appeared before me in an MDL or an MCL,
11 I'm going tell you about my practice, which I anticipate will
12 not change during the course of this litigation.

13 As a prior order has set out, I expect an agenda to be
14 submitted prior to our Case Management Conference, which will
15 form the basis of our conference and the order moving forward.
16 You'll see my order. They changed the order on the website.
17 It said "CMO No. 1." That's been changed to "Initial Case
18 Management Order." The order that is going to be generated
19 today will be CMO No. 1, and they will be numbered
20 sequentially as we move forward.

21 The orders are broken down into various parts,
22 specifically compliance with prior orders, case management,
23 discovery, and other general information that's contained in
24 an order.

25 My thought process behind that is if someone were to

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1 pick up the order and just read them in order they'll see how
2 the case progresses.

3 So, the agenda will be submitted prior to the Case
4 Management Conference. We will have a pre-meeting before we
5 go on the record with liaison counsel to discuss the
6 parameters of the Case Management Conference. We will then go
7 on the record.

8 I am a proponent, as is Judge Goodman, of meet and
9 confers and resolving as many issues as you can without the
10 necessity of court intervention. This is your litigation.
11 You can steer it however you deem fit. You can work together
12 and cooperate and move toward an efficient, quick resolution
13 or you can litigate it, and Judge Goodman and I will be happy
14 to call issues as they become ripe for adjudication, but,
15 candidly, a resolution of the issues I think expedites the
16 litigation.

17 The parties, I know many of you here, and I know you'll
18 cooperate, and you'll resolve issues before they become
19 necessary for an adjudication.

20 I was going to come out here and order mediation. I
21 have decided against that for this reason picking up just
22 where I left off. I want the parties to talk to each other,
23 to meet and confer, and to think about mediation. I don't
24 mean that to suggest that you're going to start settling cases
25 the day after a mediation is scheduled or a day after a

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1 mediator is appointed. My goal is to run two parallel tracks,
2 a mediation hopefully toward resolution as discovery is
3 progressing. It worked well -- for those of you who were in
4 the Stryker case, it worked well in Stryker. I see no reason
5 why it can't work here. And, frankly, to have a mediator on
6 board early I think is beneficial to the extent that the
7 mediator will grow with the litigation, understand the
8 litigation, understand the dynamics of the litigation, develop
9 relationships with counsel, develop a trust level with counsel
10 and when, if at all, it becomes apparent that cases can start
11 to be resolved on the merits, so to speak, the mediator will
12 be there. So, that's my intention, and I'm going to ask
13 counsel to meet and confer regarding mediation.

14 We did get some applications to be on steering
15 committees. Has anyone spoken about that --

16 MR. SEEGER: Your Honor --

17 JUDGE MARTINOTTI: -- amongst yourselves?

18 MR. SEEGER: -- Chris Seeger again. Yes, we have
19 been -- the plaintiffs have been talking. I would anticipate
20 we would be able to submit something I'm optimistic on consent
21 early next week.

22 JUDGE MARTINOTTI: Okay. Does that seem to be the
23 general consensus? Everybody is shaking their head.

24 All right. I'm going to ask counsel to meet and confer
25 and submit to the Court a proposed liaison counsel Steering

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1 Committee -- I'm going to refer you to my Case Management
2 Order, the initial Case Management Order, specifically
3 Document No. 8 at Paragraph 8 for the what I expect parties to
4 be doing if they're part of this committee.

5 You know, I understand that being part of a committee
6 is important for a variety of reasons. Hopefully the common
7 goal is in the interests of justice and the best interest of
8 the client, though I do understand that there may be some
9 personal reasons to be part of this committee. But understand
10 whether or not you're on the committee, you're still an
11 integral part of the litigation. You're all leaders in a
12 variety of ways in your variety of capacities, and one thing
13 that I think counsel who have appeared before me know is I'm
14 very flexible and things are fluid and things can change as
15 the litigation progresses. So I'm glad to see the plaintiffs
16 have been working together, and, hopefully, can get a
17 committee to me sooner rather than later. Could we say by
18 next Friday? Actually, why don't we say report back by next
19 Friday?

20 MR. SEEGER: I think for sure -- we're very lucky.
21 We have a wealth of riches. All these lawyers in this
22 courtroom are worthy of a committee spot, and they're all very
23 good. I anticipate that going very well.

24 JUDGE MARTINOTTI: And without telling you how I want
25 the committee constituted, we do want some -- we want

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1 diversity on the committee and a variety of other interests
2 being represented.

3 MR. SEEGER: Yes, your Honor.

4 JUDGE MARTINOTTI: And if there's individuals that
5 may not have the level of experience, hopefully they'll have
6 an opportunity to participate in some way so they can get the
7 level of experience and not be shut out of committees moving
8 forward.

9 MR. SEEGER: I completely understand, and those goals
10 are our goals. Thank you, your Honor.

11 JUDGE MARTINOTTI: This side of the V? I guess it is
12 a little easier.

13 MR. LEWIS: Yes, your Honor. I think we're all in
14 agreement. We had the application process for this role, but
15 ultimately we determined that Mollie Benedict and I, John
16 Lewis, will be the lead counsel, and Mr. Zogby will be liaison
17 counsel if that's appropriate for the Court.

18 JUDGE MARTINOTTI: We'll enter an order to that
19 effect. So, ordered.

20 MR. LEWIS: Thank you, your Honor.

21 JUDGE MARTINOTTI: And understand liaison counsel is
22 really just the conduit of information between the Court and
23 to counsel. It is certainly easier on your side -- there's
24 only three of you -- but to be fielding calls and letters from
25 counsel it just gets unwieldy, so I'll ask whoever is

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1 liaison to be the conduit between the Court and the lawyers.

2 There was an agenda, so what I propose to do now is we
3 will go over the agenda and then I'll break and I'll meet
4 with, I guess, the lawyers that are at the tables very
5 quickly, and then we'll come back on the record and enter a
6 formal order supplementing what I had just spoken about.

7 So, if we go to the proposed agenda -- and, again,
8 we're in the unique position because I was managing this
9 litigation before it was designated as an MDL, and I was
10 handling it as if it were an MDL, so we have made significant
11 progress through the hard work of counsel and Judge Goodman on
12 the discovery components.

13 With respect to orders entered since the last Case
14 Management Conference, our order is only going to reflect the
15 two orders that were entered regarding the protective order
16 regarding confidential information that was entered on
17 December 16th and the order regarding electronically stored
18 information, and I thank counsel for working those issues out.

19 Next part of the Case Management Conference -- my Case
20 Management Order I should say is liaison counsel we have
21 spoken about that, and we have spoken about mediation.

22 I have received the position statements. Counsel,
23 thank you very much for your well thought out, comprehensive
24 position statements within the parameters that I had set
25 forth. Talk to me about, B, Case Management Order No. 3

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1 entered in November, initial forms and orders.

2 Counsel, you're meeting and conferring on that?

3 MR. SEEGER: Yes, Judge. I'm trying to see where we
4 are. Some of this was kind of held up in anticipation of an
5 MDL being formed and getting other lawyers involved around the
6 country. We have made substantial progress. I don't
7 anticipate getting the rest of these items done taking all
8 that long as far as the master complaint and the short form
9 easily by the next CMC. Is that okay with you?

10 MR. LEWIS: I think that's very doable.

11 JUDGE MARTINOTTI: Okay. So, let's jump to that. I
12 have two dates I propose, February 23rd or March 2nd.

13 MR. SEEGER: I think on the plaintiffs' side we're
14 thinking the 23rd, if that works for the defense?

15 MR. LEWIS: That's good for defendants, your Honor.

16 JUDGE MARTINOTTI: Okay. February 23rd it is.

17 Counsel, what I'm also going to do is Judge Goodman made a
18 very good suggestion this morning, that we schedule our case
19 management conferences going out perhaps for the rest of the
20 year. I'm going to send out an e-mail with proposed dates.
21 I'm thinking Thursday seems to be a good day for everyone
22 traveling, so we'll find some Thursdays that work. We'll send
23 it out, and see if those days work. This way it will be far
24 enough. In the summer I'll schedule two, but we're probably
25 only going to have one, unless there's a real issue. I tend

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1 to think August would be -- you know what, we will not have a
2 Case Management Conference in August just in case this is
3 driving your vacation plans, so plan on spending some time
4 with your families in August, unless you want to tell your
5 families you need to be in New Jersey in which case maybe ...

6 So with respect to discovery, master complaints, you'll
7 meet and confer on those issues and advise the Court on a
8 rolling basis as they become --

9 MR. SEEGER: And just for the Court's information, we
10 have been talking about these things, and now that we have
11 everybody, we can finalize.

12 JUDGE MARTINOTTI: Okay. The case list, I know we
13 have received a case list from both counsel. We'll coordinate
14 that with the clerk's office to make sure we actually have the
15 cases. We have spoken about organization of plaintiff,
16 organization of defendant. The status of the orders.

17 Talk to me about the status of the litigation. One
18 thing that has raised a question is in the agenda it says,
19 "Administrative issue regarding classifying cases already
20 pending in the District of New Jersey as MDL cases." What
21 does that mean?

22 MR. SEEGER: That's a good question.

23 MR. ZOGBY: Your Honor, on that point there are a
24 number of District of New Jersey direct filings that have not
25 been associated with the MDL.

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1 JUDGE MARTINOTTI: Okay.

2 MR. ZOGBY: So we reached out to the clerk's office,
3 but absent direction from your Honor or from the JPML, the
4 clerk is not going assign them to the MDL, so we wanted to
5 raise that administrative issue with you.

6 JUDGE MARTINOTTI: Do we have a list of those cases?

7 MR. ZOGBY: We identified them on our case list that
8 we submitted to your Honor with our position statement.
9 There's about 21 of those such cases, if we can talk about
10 that.

11 THE COURT: All right. So in the order we'll say
12 that the Court will review the list, confer with the clerk,
13 and assign those cases to the MDL.

14 MR. ZOGBY: Thank you.

15 JUDGE MARTINOTTI: What's happening in Pennsylvania?
16 Who wants to talk to me about that?

17 MR. SEEGER: Again, if there's somebody in this
18 courtroom that knows more than I do, come on forward, maybe
19 John, but I understand there are a bunch of cases that Ellen
20 Relkin's firm has that are in Federal Court, and they're
21 moving for remand back to State Court.

22 MR. LEWIS: I'll start off, and Mr. Mankoff I'm sure
23 will supplement. So, in the Eastern District of Pennsylvania
24 defendants removed approximately 106 cases that had been filed
25 in Philadelphia Common Pleas Court under CAFA's mass action

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1 removal statute. Yesterday we had a hearing on the motion for
2 remand -- evidentiary hearing, actually -- on the motion for
3 remand and Judge Goldberg is taking the motion under
4 advisement at this time.

5 JUDGE MARTINOTTI: Okay.

6 MR. MANKOFF: I would just add that there's also a
7 motion to transfer pending under Section 1404(a) to this Court
8 that plaintiffs are opposing, and that is still in the
9 briefing process.

10 JUDGE MARTINOTTI: And that's before Judge Goldberg,
11 also?

12 MR. MANKOFF: It is before Judge Goldberg.

13 JUDGE MARTINOTTI: I spoke to Judge Goldberg several
14 weeks ago, so let's play this out, if the cases are remanded,
15 that's the end of the inquiry, correct?

16 MR. LEWIS: Correct.

17 JUDGE MARTINOTTI: To State Court, I should say.

18 MR. LEWIS: Right.

19 JUDGE MARTINOTTI: If they're not, then the next
20 issue is should they be transferred here?

21 MR. LEWIS: Correct. And we have two ways that that
22 could happen. Under Section 1404 Judge Goldberg could find
23 that it is, whatever, for the convenience of the parties the
24 cases could be transferred to this Court. That's Judge
25 Goldberg's decision. We aren't entitled to automatic transfer

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1 under Section 1407 because it is a mass action removal if more
2 than half of the plaintiffs agree, however, to transfer then
3 they would be transferred to this Court.

4 JUDGE MARTINOTTI: Okay. The discovery and pretrial
5 schedule, counsel will continue to meet and confer on that and
6 address any discovery-related issues to Judge Goodman. There
7 was a note for a science day. Defendants requested it. I
8 think they're useful. I think they're beneficial. I find
9 them to be very helpful. Do the plaintiffs object?

10 MR. SEEGER: No.

11 JUDGE MARTINOTTI: Oh, so, we'll --

12 MR. CECCHI: It is just a question of scheduling.

13 JUDGE MARTINOTTI: You know, meet and confer. Try to
14 get a schedule together. Try to get a parameter of what
15 you're going to put together. In the past I have limited them
16 to two hours on each side. If you think that's enough time,
17 let me know. Obviously, a stipulation is anything that is
18 presented, submitted, said during a science day is not to be
19 utilized in any fashion as the litigation moves forward. It
20 is just an informational session only with no evidentiary
21 weight.

22 Once you come up with a date, let me know, and unless
23 there's an objection I will invite the State Court judges to
24 come, as well. It may be beneficial for them.

25 MR. SEEGER: We don't object, and, in fact, we got to

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1 speak only for a minute or two about what that might look
2 like, so we have already started the meet and confer process.

3 JUDGE MARTINOTTI: We'll have it here. So, does
4 anybody need to be heard? What I propose now is we'll go into
5 the conference room just to talk for a few minutes with, I
6 guess, interim liaison counsel.

7 MR. SEEGER: Judge, I do have one minor issue. I
8 don't know if we had a chance to talk with John and his group
9 about it yet, but the idea of allowing people to directly file
10 in this Court. It will save the hassle of people having to
11 file in a Federal Court somewhere else in the country and then
12 have them transferred -- tagged and transferred through the
13 panel. Also, the fact that the defendant is home based here.
14 It seems to me a lot -- but I haven't had a chance to speak to
15 John.

16 MR. LEWIS: Your Honor, the direct filing makes a lot
17 of sense, but there are some details of a direct filing order
18 that need to be thought through, including choice of law
19 principles and some things like that that have caused at least
20 some consternation in prior cases, so I would love to meet and
21 confer on that issue and have a proposal.

22 JUDGE MARTINOTTI: Can't the order be crafted to the
23 extent that, you know, parties acknowledge venue in this
24 matter is properly St. Louis. It is being filed here
25 directly. Should there be a remand back for trial it goes

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1 back there, and the law would apply as if originally filed
2 there. Now, that doesn't say what the choice of law is.

3 MR. SEEGER: Right. Yes, those are some of the
4 issues we would talk through. I think it is simplified by the
5 fact that the cases are in New Jersey, and the defendants are
6 here, but we'll talk about it.

7 JUDGE MARTINOTTI: Right. Anything further? Okay.
8 We will take a brief recess. I'll see interim liaison counsel
9 and defense counsel in the jury room, and then we'll come back
10 and enter an order and let you start your long weekend.

11 Thank you.

12 (A recess was taken at 11:07 a.m.)

13 (Back in session at 12:10 p.m.)

14 JUDGE MARTINOTTI: You can all be seated, counsel.

15 Okay. We are back on the record. For purposes of the
16 record, myself and Judge Goodman met with interim liaison
17 counsel and defense counsel in chambers to talk about the
18 order that was going to be entered today, which, in essence,
19 was what was said on the record, but now in a form of order.

20 Without getting specific, the one issue that came up
21 regards the preservation order. There may have been a
22 disconnect during our prior on the record session. Under Case
23 Management Roman numeral III(D) it talks about a preservation
24 order, which I was going to strike out. Counsel indicated
25 that there was a prior order, specifically Document 34,

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1 addressing a preservation order. I misunderstood what he
2 said. So for the record, Case Management Section III(D) does
3 talk about a preservation order, however, for purposes of
4 completion and for the record the Court will note and orders,
5 though it won't be in this order, that Document No. 34,
6 subsection Roman numeral II states as follows: "Preservation
7 order: The parties have met and conferred on a preservation
8 order. The defendants have represented that they are in
9 compliance with the Federal Rules and applicable case law
10 regarding the preservation of materials and maintain there is
11 no need for a formal order."

12 Is that still true and accurate, counsel?

13 MS. BENEDICT: Yes, your Honor.

14 THE COURT: So that will be part of the record
15 embodied in the transcript, though not necessarily set forth
16 in the order. Does that satisfy counsel?

17 MR. GRAND: Yes, your Honor.

18 JUDGE MARTINOTTI: Thank you for bringing that to our
19 attention. Anything else on the terms of the order, which we
20 did set forth on the record?

21 MR. SEEGER: We're good, your Honor.

22 JUDGE MARTINOTTI: As I indicated, we will get to you
23 within the next couple of days a list of proposed Case
24 Management Conference days moving forward through the end of
25 December. I anticipate they will be on Thursdays. We'll try

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1 to keep four to five weeks in between them. There may be a
2 holiday or two that needs it to be moved. Anything further
3 from defense counsel?

4 MR. LEWIS: No, your Honor.

5 JUDGE MARTINOTTI: Plaintiffs' counsel?

6 MR. SEEGER: We're good, your Honor.

7 JUDGE MARTINOTTI: Okay. Counsel, thank you very
8 much. My best for a safe travel back from whence you came. I
9 look forward to working with you, and just for the record,
10 just one more time, no objection if I contact counsel --
11 liaison counsel ex-parte for settlement purposes?

12 MR. LEWIS: No objection on defendant's side.

13 MR. SEEGER: No objection on plaintiffs' side.

14 JUDGE MARTINOTTI: Counsel, thank you very much.
15 Safe travels. Nice meeting you.

16 (Proceedings concluded at 12:15 p.m.)

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C E R T I F I C A T E

I, **REGINA A. BERENATO-TELL, CCR, CRR, RDR**, Official United States Court Reporter and Certified Court Reporter, Certified Realtime Reporter of the State of New Jersey, Certified Realtime Reporter do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in this action.

/S/ REGINA A. BERENATO-TELL, CCR, CRR, RDR
UNITED STATES DISTRICT COURT REPORTER
Date: January 24, 2017